SUPREME COURT, U.S.
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Case Number 932089

THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

A. Paul Schwenke,
Petitioner,

v.

Utah State Bar,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UTAH SUPREME COURT

Brief in Opposition

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QUESTIONS PRESENTED FOR REVIEW

1. Should this Court examine, as a reviewing court, the action of a State Supreme Court in disbarring a member of the Bar of that state for professional misconduct?

2. Should this Court act as a court of appeals to review evidence and factual issues decided in state courts?

3. Was Petitioner afforded due process in an attorney disciplinary action when he was served with the Summons and Complaint by certified mail to his law office under the following circumstances:

(a). the Procedures of Discipline of the Utah State Bar, promulgated by the Utah Supreme Court, provided for service by certified mail;

(b). Petitioner's whereabouts

were unknown to the Utah State Bar;

(c). prior arrangements had been made with Petitioner's associate to forward to Petitioner all correspondence sent to that office from the Bar;

(d). Petitioner had asked this same associate to watch for and forward to him correspondence from the Bar;

(e). the Summons and Complaint were received at Petitioner's law office about six weeks before he left the State; and

(f). Petitioner had "contacts" with this office between the time the Summons and Complaint were received and the time he left the State?

4. Should Petitioner be granted a Writ of Certiorari to consider an

allegation of racial discrimination under the following circumstances:

a. the allegation was not raised by Petitioner at his disciplinary hearing;

b. Petitioner raised it after the hearing in a motion filed with the Board of Bar Commissioners;

c. Petitioner withdrew the allegation at a personal hearing before the full Board of Bar Commissioners; and

d. Petitioner did not raise this issue on Appeal to the State Supreme Court?

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JURISDICTION OF THIS COURT

This Court has taken the position that it has no authority to re-examine or reverse, as a reviewing court, the action of a State Supreme Court disbarring a member of the Bar of the courts of that state for personal or professional misconduct, Selling v. Radford, 243 U.S. 46, 50 (1917).

STATEMENT OF THE CASE

Petitioner was accused of violating the Rules of Professional Conduct of the Utah State Bar by misappropriating approximately $100,000.00 from his client which came into his possession in the course of settling her personal injury case.

The disciplinary Complaint filed by the Utah State Bar against Petitioner incorporated by reference a Stipulation signed by him in the Third Judicial

District Court of Salt Lake County, Utah, in the case of Serr v. Schwenke and Bruce Udall, Civil No. 88-01441. In that civil case, Petitioner confessed to a judgment of fraud not dischargeable in bankruptcy, in the amount of $100,000.00, less credits for payments to the client. (R. 100-109)

When the Complaint was issued in the Bar disciplinary action, Petitioner's whereabouts were not known to the Bar. The Procedures of Discipline then in effect provided for service of process in attorney disciplinary actions by certified mail to his last known address as shown on the official roster of attorneys of the Bar. (Petition at 20)

An investigation by the Office of Bar Counsel determined that the most likely way Petitioner would actually receive the pleadings, would be to send them to the office where he had recently practiced

law. Petitioner's office associate would not provide the Bar with Petitioner's forwarding address but agreed to forward to him all documents sent to that address by the Bar. (R. 171-178)

In reliance upon the representations of Petitioner's associate, the Summons and Complaint were served upon Petitioner by mailing them by certified mail on December 4, 1990, to his law office at 165 South West Temple, Suite 300, Salt Lake City, UT 84111. (Petition Appendix Av-1-17) The documents were received on December 5, 1990. (R. 109) Unknown to the Bar, Petitioner was still in Salt Lake City and had contacts with his office until he left the State of Utah on or about January 15, 1991. (R. 124-126)

The Disciplinary Hearing Panel, the Board of Bar Commissioners and the Utah Supreme Court found that service by

certified mail to the last address where Petitioner recently practiced law, constituted valid service of process under the Procedures of Discipline of the Utah State Bar based upon the facts and circumstances of this case. (R. 182-195) (R. 142-143)

Default was subsequently entered and on December 6, 1991, a Notice of Hearing setting the Sanctions Hearing for March 2, 1992, was sent to Petitioner by certified mail addressed to a residence in Las Vegas, Nevada. This action was taken based upon information and belief of the Office of Bar Counsel that Petitioner was residing at the Las Vegas address. (R. 079-080) A copy of the Notice of Hearing was also mailed to Petitioner by certified mail to a post office box in Murray, Utah, his last known address as shown by the official roster of attorneys of the Bar.

Petitioner testified at a Sanctions Hearing on March 2, 1992, that he was in Salt Lake City on or about February 6, 1992. He claims that on this date he learned from his former law associate that something was pending against him at the Bar and a hearing was to be held sometime in March, 1992. However, notice of the Sanctions Hearing had not been sent to Petitioner's former associate. (Transcript of Sanctions Hearing, TSH. 16-19) (Petition Appendix Av-4-32 through Av-4-38)

Petitioner did not contact the Bar, but instead returned to Las Vegas and collected his mail whereby he learned of the pending disciplinary proceedings. Petitioner subsequently appeared at the Sanctions Hearing at the correct time and on the correct date and at the correct location. The date, time and location of

the hearing could only have been obtained from the mail he collected in Las Vegas. Petitioner never claimed to have received the notice sent to his post office box in Utah. (TSH. 16-19) (Petition Appendix Av-4-32 through Av-4-38)

The Hearing Panel found he had been properly served with the Summons and Formal Complaint and that Default had been properly entered. (TSH. 21-28) Nevertheless, at the Sanctions Hearing witnesses were called and testified to the substance of the charges. The witnesses were cross-examined by Petitioner. Petitioner testified under oath in his own defense. Documents substantiating Petitioner's offenses were also admitted into evidence including the Stipulation he signed in the State District Court admitting to the charges. (TSH. 42-135) (Bar Ex. 3; TSH. 38-39)

The Hearing Panel entered Findings of Fact, Conclusions of Law, and Recommendations wherein they found that Petitioner had violated the Rules of Professional Conduct as charged misappropriating money belonging to his client. The Panel recommended his disbarment and restitution of $97,250.00. (R. 182-195)

Petitioner filed objections to these Findings with the Board of Bar Commissioners wherein he alleged he had not been properly served with the Summons and Formal Complaint and that the decision of the Panel was based on racial prejudice. (R. 200-211)

Petitioner was granted a personal hearing before the Board of Bar Commissioners. During that hearing, he dropped his allegation of racial discrimination as verified by the

Affidavit of the President of the Utah State Bar. (R. 124-126) This issue was never presented to or decided by the Utah Supreme Court. See Petitioner's Brief pages 4-6. (Petition Appendix Av-19-2 and Av-24-1-5 through Av-24-1-10)

After a number of motions were filed and resolved, the Board of Bar Commissioners approved the Findings, Conclusions and Recommendations of the Hearing Panel on September 3, 1992. In his appeal to the Utah Supreme Court Petitioner raised the issue of service of process and the Statute of Limitations. The relief sought by Petitioner was denied and he was disbarred. In re Schwenke, 865 P.2d 1350 (Utah 1993).

ARGUMENT SUMMARY

This Court has consistently declined to examine, as a reviewing court, the action of a State Supreme Court in

disbarring a member of the Bar of that State for professional misconduct or to act as a court of appeals to review evidence and factual issues decided in state courts.

This Court has also consistently declined to review claims that constitutional rights have been violated when those claims have not been raised and passed upon by the State Supreme Court.

Petitioner was afforded due process in an attorney disciplinary action when he was served with the Summons and Complaint by certified mail to his last known address in accordance with the criteria established by this Court.

ARGUMENT

Petitioner's Misstatements of Fact

Rule 15 of the Rules of the Supreme Court of the United States affords a Respondent the opportunity to list

misstatements of fact in the Petition. Petitioner has misstated facts too numerous to discuss due to the limitations on the length of this Brief. The Court is directed to the Statement of the Case in this Brief. Following are some of the more material misstatements of fact in the Petition for Writ of Certiorari.

1. In the Statement of the Case, Page 5 of the Petition, Petitioner alleges the Hearing Panel did not conduct a hearing to establish the merits of the Formal Complaint. The Hearing Panel in fact held a hearing on the merits of the Formal Complaint as verified by the transcript of the hearing. (Petition Appendix, Volume Two)

2. In the Statement of the Case, Page 6 of the Petition, Petitioner alleges he raised "the" disparate treatment issue before the Hearing Panel on March 2, 1992.

During the hearing Petitioner argued he was entitled to the same sanction as another attorney in his office who shared in some of the money taken from Petitioner's client. However, he did not raise the issue of racial discrimination. (TSH pp. 145-146) (Petition Appendix Av-4-267 to 271) Petitioner did not raise the issue of racial discrimination in his appeal to the Utah Supreme Court. (Appellant's Brief Pages 4-6) (Petition Appendix Av-24-1-5 to Av-24-1-10)

3. In the Statement of the Case, Pages 9-10 of the Petition, Petitioner alleges as part of his due process argument that there were no facts in the record to support the finding of the Utah Supreme Court that he received notice of the Sanctions Hearing from documents mailed to him by the Bar to his Las Vegas address. Petitioner falsely implies he

learned of the date and time of the March 2, 1992, Sanctions Hearing from his former associate, Jamis Johnson. Petitioner then cites a portion of the transcript of the Sanctions Hearing. However, he omits those portions that refute his allegation and which support the findings of the Utah Supreme Court that this information came from the notice mailed to him by the Bar at an address in Las Vegas.

Petitioner testified at the Sanctions Hearing that on February 6, 1992, Mr. Johnson told him "there was something pending" against him at the Bar "sometime in March." (Petition Appendix Av-4-35-36). Subsequently, Petitioner returned to Las Vegas where he "collected a lot of the mails" sent to the Las Vegas address. (Petition Appendix Av-4-37) Since he had not learned the date, time and location of the hearing from Mr. Johnson, and since

Petitioner, in fact, appeared at the hearing on the proper date and at the correct time, he could only have obtained this information from the notice mailed to Las Vegas. Petitioner never mentioned collecting his mail from his Utah mail box. The record of trial shows that notice of the Sanctions Hearing was never sent to Petitioner's former associate. (TSH. 17-19)

4. On Pages 25 through 42 of the Petition, Petitioner makes allegations of criminal fraud on the part of the Office of Bar Counsel including allegations of tampering with the court record and submitting false affidavits. Bar Counsel denies Petitioner's false and defamatory allegations.

The Affidavit of Bar Counsel, Stephen A. Trost, referenced in the Petition is true and accurate. It was referenced in

Appellee's Brief filed with the Utah Supreme Court, attached thereto as Appendix C, and served on Petitioner on or about July 22, 1993. Petitioner did not challenge this Affidavit in his appeal to the Utah Supreme Court. If it was inadvertently omitted from prior documents, in which it was also referenced, Petitioner did not bring this to the attention of the Office of Bar Counsel, or raise the issue on appeal.

If there are any irregularities in the court record, the Bar Counsel asserts that they occurred in the handling of the record by the court clerk or at the hands of Petitioner who had exclusive control of the record in preparing his appeal.

5. On Pages 58-59 of his Petition, Petitioner claims there was nothing in the Appellate record to support the finding of the Utah Supreme Court that he had

withdrawn his allegations of racial discrimination. The President of the Utah State Bar, who was present and presided at the hearing before the Board of Bar Commissioners, signed an Affidavit verifying that Petitioner appeared and withdrew his allegations of racial discrimination. This Affidavit is part of the record of the proceedings before the Board of Bar Commissioners and was properly considered by the Utah Supreme Court. (R. 124-126)

Petitioner did not challenge the Affidavit of the President of the Utah State Bar in his appeal. (Appellate Brief 4-6) (Petition Appendix Av-24-1-5 to Av-24-1-10)

6. On Pages 44-47 of his Petition, Petitioner alleges that the Order Affirming Findings of Fact Conclusions of Law and Recommendation of Discipline dated

September 3, 1992, applied only to the Default entered against him on July 31, 1992, and that the Default entered in March, 1991, was not properly before the Utah Supreme Court. This is not correct. The Order of September 3, 1992, incorporates, adopts and affirms the Findings, Conclusions and Recommendations of the Hearing Panel entered March 2, 1992, and reduced to writing on April 20, 1992. The Hearing Panel found Petitioner had been properly served with the Summons and Complaint on or about December 5, 1990, and Default properly entered in March, 1991. (Av-5-1 to Av-5-22) (R.142-143) (Appendix Y, Respondent's Brief)

Petitioner's Misstatements of Law

1. On Page 16 of the Petition, Petitioner cites the cases of Gately v. Sutton, 310 F.2d 107 (10th Cir. 1962) and Clark v. State of Washington, 366 F.2d 678

(9th Cir. 1966) as authority for the proposition that a Writ of Certiorari to the United States Supreme Court is available to an attorney seeking review of a disbarment from state courts. This is incorrect. Both of these cases state that federal courts do not have jurisdiction to review state disciplinary actions. These decisions stand only for the proposition that an attorney disbarred or suspended from the practice of law in state courts may ask this Court that he or she not be disbarred from federal courts within the state.

2. On Page 17 of the Petition, Petitioner cites the cases of Schware v. Board of Examiners, 353 U.S. 232 (1957) and Wilner v. Committee on Character and Ethics, 373 U.S. 96 (1963), for the proposition he has the right to have this Court review this attorney discipline case

on Fourteenth Amendment grounds. These are cases of attorneys seeking admission to practice law, they do not pertain to attorney discipline. This court has consistently refused to review state attorney discipline cases on the grounds alleged by Petitioner.

2. On Pages 20-25 of the Petition, Petitioner erroneously alleges that Rule XI(b) of the Procedures of Discipline of the Utah State Bar requires personal service of the Summons and Complaint. The Rule plainly states that service may be made personally or by registered or certified mail. (Petition at 20)

In a prior disciplinary proceeding involving this Petitioner, the Utah Supreme Court said that actual notice, not personal service, of pending disciplinary proceedings is essential in proceedings involving suspension or disbarment.

(Petition at 21) The Utah Supreme Court in the instant case found that Petitioner did have actual notice based upon the facts of the case. Petitioner is asking this Court to overrule this finding of fact, a request that does not fall within the function of this Court.

2. On Pages 22-23 of the Petition, Petitioner incorrectly alleges that Rule 4(g) of the Utah Rules of Civil Procedure applied to the service of the Summons and Complaint in this attorney disciplinary proceeding. Rule XI(b) of the Procedures of Discipline, not the Rules of Civil Procedure, governed service of process in attorney discipline matters. (Petition at 20)

3. On Pages 40-41 of the Petition, Petitioner construes the decision of the Utah Supreme Court as holding that service of the Summons and Complaint upon him by

certified mail to the last address where he practiced law was somehow service upon his "agent." This was never an issue in his case and the Utah Supreme Court never found that service was obtained through an agent.

REASONS FOR DENYING THE PETITION

I

It is not the function of this Court to review evidence and factual issues decided in state courts.

Throughout his Petition, Petitioner takes issue with the Findings Fact of the Hearing Panel and the Board of Bar Commissioners regarding the service of the Summons and Complaint and various documents associated with this disciplinary action. He also takes issue with the Utah Supreme Court for adopting those Findings of Fact.

Additionally, he argues for the first time facts that were not advanced before the Hearing Panel, Board of Bar Commissioners, or the Utah Supreme Court. For example, on Pages 34-36 the Petition he refers to alleged facts surrounding his departure from the State of Utah and an alleged Affidavit of Mr. Johnson, that were never presented to the Hearing Panel, the Board of Bar Commissioners or the Utah Supreme Court.

In the case of General Talking Pictures Corp. v. Western Electric Co., 304 U.S. 175, 178 (1938), this Court held that a Writ of Certiorari would not be granted merely to review evidence or the inferences that can be drawn therefrom.

II

It is not the function of this Court to examine, the action of a State Supreme

Court in disbarring a member of the Bar of that state for professional misconduct.

While the Court has granted review of attorney admission cases, where constitutional issues were raised, it has consistently deferred matters of attorney discipline to State courts. Konigsberg v. State Bar, 353 U.S. 252 (1957); Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232 (1957).

This court held in the case of Selling v. Radford, 243 U.S. 46, 50 (1917) that it had no authority to re-examine or reverse, as a reviewing court, the action of the Supreme Court of Michigan in disbarring a member of the Bar of the courts of that State for personal or professional misconduct.

In the case of Theard v. United States, 354 U.S. 278 (1957), this Court considered an attorney disbarment case

wherein the State of Louisiana had disbarred an attorney in 1954 for a forgery in 1935 at a time when he was in a state of mental irresponsibility so pronounced that for several years he was in an insane asylum. Thereafter, the lawyer practiced six years preceding the disbarment action with no charges of misconduct. This Court declined to disbar Mr. Theard from practicing before federal courts but did not disturb the State of Louisiana disbarment in accordance with the holding in the case of Selling v. Radford, supra.

In the case of In re Ruffalo, 390 U.S. 544 (1986), an attorney was disbarred by the State of Ohio. This Court found that the attorney was not put on notice that his conduct was a disbarment offense which deprived him of procedural due process. Accordingly, the Court permitted

him to continue to practice before the federal courts but denied his Petition for Writ of Certiorari to consider the merits of his State disbarment.

III

Petitioner was afforded due process in the service of the Summons and Complaint.

Petitioner fled the State of Utah, secreted himself from the Utah State Bar, and now cries foul when he was not personally served with the Summons and Complaint in this disciplinary action.

Petitioner cites Rule 4 of the Utah Rules of Civil Procedure in support of his allegation that he was not properly served with the Summons and Complaint. Petitioner is fully aware that this Rule did not then apply to attorney disciplinary proceedings. The Utah Supreme Court promulgated the Procedures

of Discipline of the Utah State Bar which set forth the procedure to be followed in attorney discipline matters. (Petition at 20) Petitioner's disciplinary action was governed by those procedures.

Rule XI(b) of the Procedures of Discipline of the Utah State Bar, then in effect, provided that service could be made personally upon a respondent, or by registered or certified mail, to the last known address as shown by the official roster of attorneys of the Bar.

It is undisputed that Petitioner was not personally served because his whereabouts were unknown to the Bar. As set forth above in the Statement of the Case, Petitioner had been practicing law in Salt Lake City, Utah. The Office of Bar Counsel was acting upon information and belief that Petitioner had stopped practicing law and had left the State

without providing the Bar with his current address.

In reliance upon that information, the Office of Bar Counsel conducted an investigation to determine how Petitioner might be served with the Summons and Complaint in the pending disciplinary action. It was determined that it was unlikely Petitioner would receive the pleadings if they were mailed to his local post office box address. Accordingly, Bar Counsel met with Petitioner's former associate at the location where Petitioner had been practicing law to determine whether Petitioner would receive the pleadings if mailed to that location. Bar Counsel was informed by Petitioner's associate that he would forward to Petitioner all correspondence addressed to Petitioner that was received at the law office. (R. 171-178)

Accordingly, a copy of the Summons and Complaint were sent by certified mail to Petitioner's law office on December 4, 1990. The pleadings were received at that office on December 5, 1990. (R. 100-109) (R.002-011)

Unknown to the Bar, Petitioner had not yet departed the State. He remained in Utah until on or about mid-January, 1991, during which time he had "contacts" with the office to which the pleadings were mailed. (R. 124-126)

The Utah Supreme Court found Petitioner was properly served with the Summons and Complaint. This decision is consistent with other decisions of the Utah Supreme Court regarding service by mail, Carlson v. Bos, 740 P.2d 1269 (Utah 1987); Anderson, dba Image Limousine v. Public Service Commission of Utah, 839 P.2d 822 (Utah 1992).

This Court held in Mullane, v. Central Hanover Bank & Trust Co., 399 U.S. 306, 314 (1950), that due process is satisfied without personal service provided notice is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action.

In deciding this issue, the Court noted that the interest of the State must be balanced against the individual interest protected by the Fourteenth Amendment. The Court declined to specify any formula to achieve the balance between these interests but noted that the constitutional requirements are satisfied if the notice is reasonably calculated to apprise the interested parties of the action with due regard for the practicalities and peculiarities of the case.

The action taken by the Utah State Bar in contacting Petitioner's associate, and making arrangements to have documents mailed to that office forwarded to Petitioner, was reasonable in light of the fact that the Bar did not know the whereabouts of Petitioner and could not have effected personal service of process.

This action by the Bar was calculated to notify Petitioner of the initiation of Bar disciplinary proceedings. The means employed by the Bar verify that the Bar was desirous of actually informing Petitioner of the initiation of the action and were reasonably adopted for this purpose.

The fact that the Bar did not merely send a copy of the pleadings by certified mail to Petitioner's post office box, but instead, made arrangements to have the Summons and Complaint forwarded to

Petitioner, constituted action that was reasonably certain under the circumstances, to inform Petitioner of the filing of the Complaint.

These facts satisfy the criteria of Mullane v. Central Hanover Bank & Trust Co., supra, and constitute valid service of process even if Petitioner had not, in fact, received the pleadings. However, the facts show that the Summons and Complaint were received at Petitioner's law office on December 5, 1990, and that he had "contacts" with the office until about mid-January, 1991. This, together with the fact that Petitioner's associate had been asked by the Bar and by Petitioner to be on the lookout for correspondence from the Bar addressed to Petitioner, establishes by clear and convincing evidence that Petitioner had

actual notice of the disciplinary proceedings. (TSH. 5-6)

IV

Petitioner did not raise the issue of racial discrimination in his Appeal to the Utah Supreme Court.

Likewise, the following issues were either not raised on appeal or not considered and passed on by the Utah Supreme Court:

a. the issue regarding the applicability of Rule 4(g) of the Utah Rules of Civil Procedure to this attorney disciplinary case; (Petition at 23)

b. allegations of misconduct by the Utah State Bar; (Petition 25-40)

c. allegations regarding the Affidavit of Bar Counsel Stephen A. Trost; (Petition 25-40)

d. the content of the alleged Affidavit of Jamis Johnson; (Petition 25-40)

e. whether Mr. Johnson was Petitioner's agent for service of process; (Petition 40-41)

f. whether the Notice of the Sanctions Hearing was constitutionally defective due to its content; (Petition at 43)

g. whether subsequent personal service of the Summons and Complaint on Respondent on July 7, 1992, was improper; (Petition 48-50)

h. whether his right to due process was violated when no record was made of the meeting of the Board of Bar Commissioners even though Petitioner did not request that the meeting be recorded; (Petition 51-52)

i. the allegation that Rule 4-504 of the Utah Code of Judicial Administration was not followed; (Petition 53-56) and

j. allegations of record tampering. (Petition 56-58)

This court will not consider issues not passed on by state courts.

Petitioner first raised the issue of racial discrimination in his Motion for Reconsideration filed with the Board of Bar Commissioners. This was after the Hearing Panel of the Ethics and Discipline Committee had found his misconduct warranted disbarment.

Petitioner was granted a personal hearing before the Board of Bar Commissioners at their monthly meeting during which he withdrew his allegation of racial discrimination. This is verified by the President of the Board, who is also

the President of the Bar, in his Affidavit. (R.124-126)

Ultimately, the Board of Bar Commissioners approved the Findings, Conclusions and the Recommendation of the Hearing Panel that Petitioner be disbarred. (R. 142-143)

In his Appeal to the Utah Supreme Court, Petitioner presented four issues, none of which were allegations of racial discrimination. This is evidenced by the Appeal Brief filed by Petitioner.

In Banker's Life & Casualty Co. v. Crenshaw, 486 U.S. 71, 76 (1988), this Court would not consider, by way of a Writ of Certiorari, an appellant's claims that his due process rights had been violated

when those claims had not been raised and passed upon by the state court.

In Clark v. Jeter, 486 U.S. 456, 459-460 (1988), this Court refused to consider, by way of a Writ of Certiorari, a petitioner's contention that a state statute was invalid since the question was not adequately presented to the state court. This Court said, "It is the practice, when reviewing decisions by state courts, not to decide federal claims that were not pressed or passed upon below." 486 U.S. at 459.

These decisions followed a long line of similar decisions such as Beck v. Washington, 369 U.S. 541 (1962), where the Court refused to consider Petitioner's contention that he was denied equal protection of the law in a criminal case. The Court would not consider the issue

because it was not raised and passed upon by the State Court.

The Court found in Beck that the constitutional issue raised by the Petitioner was not properly before the Court because it was not argued in Petitioner's Brief to the State Supreme Court. While the Petitioner, in that case, had mentioned the issue in one sentence of his Brief, his failure to argue it to the State Supreme Court constituted a waiver or abandonment of the issue. Consequently, this Court held that the issue having not been raised with the State Supreme Court could not be entertained by the United States Supreme Court.

On Page 554 of the Beck opinion, the Court noted that time and time again the Court had stated that the 14th Amendment does not assure uniformity of decisions or immunity from judicial error. Otherwise,

every alleged misapplication of state law would constitute a federal constitutional question.

V

None of the grounds advanced by Petitioner satisfy the requirements of Rule 10 of the Rules of the Supreme Court for granting a Writ of Certiorari.

CONCLUSION

For the above-stated reasons, Respondent respectfully requests that this Court deny the Petition for Writ of Certiorari.

DATED this 12th day of July, 1994.

OFFICE OF DISCIPLINARY COUNSEL
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By: _____
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